

REMARKS/ARGUMENTS

Claims 14-29 are pending.

Claim 24 is amended as suggested by the Examiner to overcome the 35 U.S.C. 112 rejection.

Claims 14-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson et al. (US 6,168,948) in view of Nelson et al. (US 5,770,029), Wilding et al. (US 5,726,026), and Henco et al. (US 5,652,141).

Applicants respectfully request reconsideration of the claims rejections in view of the following arguments.

In the last office action, the Examiner removed the previous obviousness rejection in view of Anderson (US 6,168,948), Nelson (US 5,770,029), and Wilding (US 5,726,026). However, the Examiner then gave a new ground of rejection by combining these first three references of Anderson, Nelson, and Wilding with the reference of Henco. The Examiner alleges that it would be obvious to use the porous matrix lysis technique taught by Henco in the lysis chamber of the primary reference of Anderson.

In response, Applicants respectfully submit that even if they were combined, the references of Anderson and Henco would fail to teach the steps recited in sole independent claim 14 of forcing the sample to flow through the lysing chamber to capture the cells or viruses with the filter and agitating the beads to lyse the cells or viruses, wherein the beads are agitated by sonicating the lysing chamber using an ultrasonic transducer coupled to a wall of the lysing chamber. Applicants further submit that it would not even be physically possible to agitate beads to lyse cells or viruses in the porous matrix of Henco. This is because the porous matrix, as Henco explicitly teaches, has voids each having a size sufficient to capture one of the cells. Thus, there is no room in the matrix for agitating beads to lyse the cells or viruses. Where would the beads for rupturing the cells or viruses even be placed in the matrix, since the matrix has pore sizes just sufficient to capture individual cells? Henco's matrix is only really suitable for lysing

the immobilized cells by chemicals, and indeed the only example of operation Henco gives is trapping of the cells in the matrix followed by chemical lysis with non-ionic detergent.

Thus, even if one skilled in the art tried to insert the porous matrix taught by Henco into the lysis chamber of Anderson, the combination still would not teach the recited method steps of agitating beads to lyse the cells or viruses, wherein the beads are agitated by sonicating the lysing chamber using an ultrasonic transducer coupled to a wall of the lysing chamber, nor would it even be physically possible to do so. Nelson and Wilding fail to remedy the shortcomings of Anderson and Henco, and fail to teach or suggest Applicants' method recited in claim 14.

For at least the foregoing reasons, claim 14 and claims 15-29 depending therefrom are patentable.

The provisional double-patenting rejection in view of copending application no.10/005,685

Applicants submit herewith a terminal disclaimer to overcome the provisional rejection.

Appl. No. 09/800,590
Amdt. dated November 18, 2004
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group

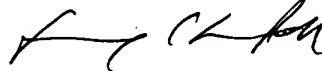
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CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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